

Exhibit 3

From: Whitaker, Joshua [REDACTED]
Sent: Friday, August 25, 2023 6:24 PM
To: [REDACTED]
Cc: Boughton, Kathryn; ecervantes; Horley, Timothy; Karparkin, Jeremy C.
Subject: RE: ADOT Issues
Attachments: 2023-08-24 DRAFT Stipulation re Access to ADOT Data (revised).docx

Ernest,

Sorry for the delay, and thanks for the call just now. Attached is a revised draft that replaces the sentence at issue with:

The Director of the Arizona Department of Transportation ("ADOT Director") is a party in this case as explained in a previous stipulation. (Doc. 381.)

I think that resolves the concerns, but let me know if otherwise.

Thanks and have a great weekend.

Josh Whitaker
Unit Chief, Special Litigation



Arizona Attorney General Kris Mayes
Solicitor General's Office
2005 N. Central Ave., Phoenix, AZ 85004
[REDACTED]

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From: Ernest Herrera <[REDACTED]>
Sent: Friday, August 25, 2023 9:18 AM
To: Whitaker, Joshua <[REDACTED]>; 'Michelle Kanter Cohen' <[REDACTED]>
Cc: Boughton, Kathryn <[REDACTED]>; Erika Cervantes <[REDACTED]>; Horley, Timothy <[REDACTED]>; Jeremy.Karparkin <[REDACTED]>
Subject: Re: ADOT Issues

Hi Josh:

One issue I have with the stipulation is the description of ADOT as a nominal party. Could we just say "is a defendant" or simply drop "nominal" from the current draft?

If we need to discuss further, I can talk on a break during this USCIS deposition.

Ernest I. Herrera
Regional Counsel, Western Region
Mexican American Legal Defense and Educational Fund
Pronouns: He/him/his
634 S. Spring Street, 11th Floor
Los Angeles, CA 90014

[REDACTED]

From: Whitaker, Joshua [REDACTED] >
Sent: Thursday, August 24, 2023 8:28 PM
To: 'Michelle Kanter Cohen'
Cc: Boughton, Kathryn; Erika Cervantes; Ernest Herrera; Horley, Timothy [REDACTED]
Subject: RE: ADOT Issues

Hi Michelle,

Attached please find the proposed stipulation. If there are no edits, please add a signature block (with signature) for each relevant plaintiff group. Then we can sign and file the stipulation.

Also please let us know who will receive the data on behalf of Consolidated Plaintiffs. Unlike other productions, we do not intend to send the data to all counsel, as doing so would far exceed 16 recipients.

Our understanding is that ADOT has prepared the requested data. We (in the AG office) will work tomorrow on getting the data and marking and producing it. I cannot promise we will have it produced tomorrow, especially given the USCIS deposition, but we will do our best.

Thanks,
Josh

From: Michelle Kanter Cohen <[REDACTED]>
Sent: Wednesday, August 23, 2023 10:31 AM
To: Whitaker, Joshua [REDACTED]
Cc: Boughton, Kathryn [REDACTED]; Erika Cervantes [REDACTED]; Ernest Herrera [REDACTED]; Horley, Timothy [REDACTED]; [REDACTED]
Subject: Re: ADOT Issues

Josh,
Hope you're having a good week. When should we expect to get the proposed stipulation? We look forward to receiving the data at the end of the week.
Thanks very much,
Michelle

On Fri, Aug 18, 2023 at 6:12 PM Whitaker, Joshua [REDACTED] > wrote:

Michelle and all,

ADOT is working on creating a file containing the data points requested (customer number, credential number, value for citizenship status, credential issue date, credential expiration date). Some of the data points are not in the monthly customer extract given to the Secretary of State, which is why a new file needs to be created. ADOT tentatively estimates that the file will be created by the end of next week.

We plan to send you a proposed stipulation memorializing the agreed-upon restrictions on transmission/use/access.

Thank you for your patience. Feel free to reach out with any further questions.

Josh

Josh Whitaker
Unit Chief, Special Litigation



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[2005 N. Central Ave., Phoenix, AZ 85004](https://www.azag.gov/2005-N-Central-Ave-Phoenix-AZ-85004)

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From: Whitaker, Joshua
Sent: Thursday, August 17, 2023 1:52 PM
To: 'Michelle Kanter Cohen' <[REDACTED]>
Cc: Ernest Herrera <[REDACTED]>; [REDACTED]; Erika Cervantes <[REDACTED]>; Boughton, Kathryn <[REDACTED]>; Horley, Timothy <[REDACTED]>
Subject: RE: ADOT Issues

Thanks, Michelle. We have passed on these clarifications to ADOT and will let you know as soon as we hear back.

Thanks,
Josh

Josh Whitaker
Unit Chief, Special Litigation



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From: Michelle Kanter Cohen [REDACTED]
Sent: Thursday, August 17, 2023 1:03 PM
To: Whitaker, Joshua [REDACTED]
Cc: Ernest Herrera [REDACTED]; Erika Cervantes [REDACTED]
[REDACTED]; Boughton, Kathryn [REDACTED]; Horley, Timothy [REDACTED]
[REDACTED]
Subject: Re: ADOT Issues

Thanks, Josh. Plaintiffs can agree to a limitation of 16 counsel per side who have access to individualized information as long as 1) we can swap people out if there are transitions out or extended vacation or leave (e.g. more than 2 weeks) and 2) the restriction is of course only applied to details of individual records, not the overall analysis. I believe 2) was clear from our prior email but wanted to confirm. Also, we wanted to confirm that any plaintiff group's expert could access the data under these terms if relevant to their expert analysis.

Thanks,
Michelle

Michelle E. Kanter Cohen
Policy Director and Senior Counsel
Fair Elections Center
[1825 K Street NW, Suite 701](#)
[Washington, DC 20006](#)

[REDACTED]
Pronouns: she/her
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

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On Tue, Aug 15, 2023 at 6:23 PM Whitaker, Joshua [REDACTED] wrote:

Thank you, Michelle.

Following up on one point: Is there a way to limit how many attorneys can view the information (e.g., 16 attorneys per side)? Part of our concern is the sheer number of lawyers in this case. The more people who can access information, the greater the risk of error, even when everyone acts in good faith.

Thanks,
Josh

Josh Whitaker

Unit Chief, Special Litigation

Arizona Attorney General Kris Mayes
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From: Michelle Kanter Cohen [REDACTED]
Sent: Monday, August 14, 2023 4:32 PM
To: Whitaker, Joshua [REDACTED]
Cc: Ernest Herrera [REDACTED]; Erika Cervantes [REDACTED]
[REDACTED] >; Boughton, Kathryn [REDACTED] >; Horley, Timothy [REDACTED]
[REDACTED] >
Subject: Re: ADOT Issues

Dear Josh,

Thank you for following up on our Friday conversation. We are writing to provide a specific proposal regarding production of ADOT data so that we can hopefully resolve this issue without the court's intervention. Plaintiffs' expert needs the following information to complete his analysis. If ADOT does not agree to produce at minimum this information, that will create a discovery dispute that will require the Court's resolution. Please let us know at your earliest convenience whether ADOT will produce this information or whether we should call the court for appropriate dates for a discovery dispute conference.

We need the following information for each active MVD record:

- MVD Customer Number
- AZ Credential number (DL number)
- Value in the extracts for noncitizenship status (Y or blank as created for the extracts) OR the value in the authorized presence field
- Credential issue date
- Credential expiration date

Plaintiffs would be willing to adopt the following restrictions regarding ADOT information including:

- Designating such information "For Counsel Only" under the supplemental protective order (Doc. 457) (to include experts hired by counsel).
- No transmission except via secure file transfer; expert may make additional copies only as necessary for use in this litigation by the expert;
- Limiting the number of people who can view the information in individual records to the expert and attorneys of record.

Sincerely,

Michelle E. Kanter Cohen
Policy Director and Senior Counsel
Fair Elections Center
[1825 K Street NW, Suite 701](#)
[Washington, DC 20006](#)

Pronouns: she/her

[REDACTED]

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On Sun, Aug 13, 2023 at 6:27 PM Whitaker, Joshua <[REDACTED]> wrote:

Ernest and all,

I wanted to follow up on the issue of expert access to ADOT data. Here is my understanding of where things stand. Please correct me if I'm mistaken.

1. In the 8/11 deposition, MVD Director Eric Jorgensen answered a lot of questions about information maintained by ADOT and shared with the Secretary of State. It appears that this testimony helped Plaintiffs understand ADOT's discovery responses and confirmed some of Plaintiffs' beliefs about ADOT's information.

2. Notwithstanding the deposition, Plaintiffs continue to seek access to at least some information maintained by ADOT. Although we proposed a compromise in which Plaintiffs' expert would physically visit ADOT and view data shared with the Secretary of State, Plaintiffs do not think the compromise is sufficient because Plaintiffs' expert would like an actual copy of data to use and analyze.

3. I spoke with you and Niyati Shah, as well as Mr. Jorgensen and Stacy Guillen (ADOT's in-house counsel), immediately after the deposition. As mentioned, ADOT believes the best way forward is for Plaintiffs to make a specific proposal about what information they still need from ADOT and whether limits are acceptable. For example:

- Do Plaintiffs need a copy of the entire customer extract that ADOT gives the Secretary each month as a result of HB 2243? In particular:
 - The extract contains many fields including customer number, credential number, full name, date of birth, last four digits of SSN, physical address, mailing address, and citizenship indicator. (See ADOT 001400.) Do Plaintiffs need all these fields, or can some be redacted/omitted?
 - The extract contains information for millions of customers. Do Plaintiffs need information for all such customers, or would a sample suffice?
- Do Plaintiffs need information beyond the customer extract? If so, what specifically? For example, I believe you previously mentioned seeking information on voters whose registrations were cancelled for insufficient proof of citizenship (I believe you estimated 1400 such voters).
- Would Plaintiffs be willing to adopt restrictions regarding ADOT information including:
 - Designating such information "For Counsel Only" under the supplemental protective order (Doc. 457)?
 - Limiting ways in which such information can be transmitted (e.g., prohibiting transmission via email, prohibiting making additional copies beyond what is given to the expert)?

- Limiting the number of people who can view such information (e.g., restricting viewing to the expert himself and perhaps a few select attorneys)?

As mentioned, we have serious privacy concerns and doubt whether Plaintiffs really need all the abovementioned information, but we understand Plaintiffs' urgency. We ask Plaintiffs to respond asap so that we can evaluate the proposal and make a final decision. If ADOT does not accept Plaintiffs' proposal, we agree that the issue should be brought to the Court promptly. We think the right procedure in that circumstance would be to call the Court. (See Doc. 338, pg. 3.) If the Court orders ADOT to produce, ADOT will follow the Court's guidance. As previously noted, ADOT is a nominal party and is willing to respond to reasonable requests. (See Doc. 381.)

4. If there are fact stipulations that ADOT could enter into which would obviate the need to share private information, ADOT is open to considering such stipulations as well.

Please let me know whether I should include other plaintiffs' counsel on this thread. Also feel free to forward to other plaintiffs' counsel.

Thank you,
Josh

Josh Whitaker
Unit Chief, Special Litigation

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Arizona Attorney General Kris Mayes
Solicitor General's Office
[2005 N. Central Ave., Phoenix, AZ 85004](#)

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From: Ernest Herrera >
Sent: Wednesday, August 9, 2023 1:46 PM
To: Whitaker, Joshua >
Cc: > Erika Cervantes
>; Boughton, Kathryn > Horley, Timothy
>
Subject: RE: ADOT Issues

Thank you, Josh. I will await an answer from ADOT on data access for our expert. I would be open to a discussion with Ms. Guillen after the deposition.

Right now, I know of only two of Plaintiffs' attorneys attending in person. Therefore, I think one of the breakout rooms will suffice. Thanks.

Ernest I. Herrera
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From: Whitaker, Joshua [REDACTED]
Sent: Wednesday, August 9, 2023 10:22 AM
To: Ernest Herrera [REDACTED]
Cc: [REDACTED] >; Erika Cervantes
[REDACTED] >; Boughton, Kathryn [REDACTED] >; Horley, Timothy
Subject: RE: ADOT Issues

Ernest,

I've reached out to ADOT to see if there is another option regarding data for Plaintiffs' expert. Will let you know when I hear back, but I don't know when that will be and I understand your urgency.

ADOT's in-house counsel Stacy Guillen plans to attend Mr. Jorgensen's deposition on Friday (though will need to step out for part of it). Perhaps it makes sense to have a conversation after the deposition.

For the deposition, do you know yet how many people from Plaintiffs' side plan to attend in person? We've reserved two breakout rooms but are not sure if that's enough. We'd also like to let our security folks know how many to expect. (We can also email that question to the entire group of attorneys if that is preferable.)

Thanks,
Josh

Josh Whitaker
Unit Chief, Special Litigation

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Arizona Attorney General Kris Mayes
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[2005 N. Central Ave., Phoenix, AZ 85004](#)

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From: Ernest Herrera [REDACTED] >
Sent: Monday, August 7, 2023 2:00 PM
To: Whitaker, Joshua [REDACTED] >
Cc: [REDACTED] >; Erika Cervantes
[REDACTED] >; Boughton, Kathryn [REDACTED] >; Horley, Timothy
[REDACTED] >
Subject: RE: ADOT Issues

Hi Josh:

We await the documents from the supplemental production that you mentioned.

As for additional documents associated with ADOT001393, we would be interested in documents about the December 2022 meeting, as well as any others having to do with 2243 implementation.

As for the expert discussion, we will confer and get back to you. Thank you for getting back to us on that.

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From: Whitaker, Joshua [REDACTED]
Sent: Friday, August 4, 2023 2:59 PM
To: Ernest Herrera <[REDACTED]>
Cc: [REDACTED]; Erika Cervantes
[REDACTED]; Boughton, Kathryn [REDACTED]; Horley, Timothy
[REDACTED]
Subject: RE: ADOT Issues

Ernest and all,

I spoke with ADOT folks today and have a few updates:

- Yes, we anticipate an additional production consisting of ADOT emails related to HB 2243 and HB 2492. We anticipate between 150 and 160 documents (but this number includes things like calendar invitations and attachments). Some will be marked confidential. We anticipate producing on Monday.
- Beyond the emails described above, we do not anticipate a further production from ADOT. As for ADOT001393, I'm not sure which parts you're referring to. If you have a specific question about ADOT001393, let me know and I can pass it on to ADOT folks, though I can't promise a response from ADOT before the deposition. Of course you are welcome to ask Mr. Jorgensen about ADOT001393 at the deposition.
- In response to Interrogatory No. 7, ADOT distinguished between "post-Max status changes" and "pre-Max status changes." ADOT has produced a summary document relating to post-Max status changes. (ADOT 001411.) Unfortunately, despite substantial effort, ADOT has been unable to generate a similar summary document relating to pre-Max status changes. My understanding is that ADOT has encountered technical issues involving how pre-Max data is stored. Although ADOT can manually summarize pre-Max status changes on an individualized basis, ADOT has been unable to generate a broader reliable summary document for pre-Max status changes. Mr. Jorgensen is prepared to explain these issues at the deposition if needed.

- As for a call with Plaintiffs' expert: ADOT folks believe the most workable solution is for Plaintiffs' expert to physically visit ADOT and view data that ADOT provides the Secretary. An ADOT representative could be present to answer questions and monitor. We recognize this option may be inconvenient, but we think it is the best way to balance Plaintiffs' desire for information with ADOT's need to maintain privacy for millions of people. If we pursue this option, a more tailored protective order would likely be necessary—e.g., specifying that information viewed in this manner will be treated as For Counsel Only under the existing supplemental protective order, not copied, not used for any other purpose, etc. We suggest that this option be raised with counsel for all parties at the end of Mr. Jorgensen's deposition, after he is done testifying but before he has left the room. That way there can be discussion and anyone with questions or concerns can voice them. (For example, perhaps counsel for other parties may insist on being present; we do not know.) If Plaintiffs' expert is available for that discussion, that might be productive, although we understand if Plaintiffs would prefer not to reveal their expert's identity yet. We also reiterate that Mr. Jorgensen's deposition testimony may favor Plaintiffs in a way that obviates a need to view the data.

I can be available anytime after 3:30pm today if you would like to call: 602-542-7738 (which auto-forwards to my cell).

Thanks,
Josh

Josh Whitaker
Unit Chief, Special Litigation

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[2005 N. Central Ave., Phoenix, AZ 85004](#)

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From: Ernest Herrera >

Sent: Friday, August 4, 2023 12:13 PM

To: Whitaker, Joshua

Cc:

; Erika Cervantes

; Boughton, Kathryn

>; Horley, Timothy

Subject: Re: ADOT Issues

Hi Josh:

Please let us know if you need any more info for the deposition.

I have a couple of other concerns regarding ADOT and was wondering when you can talk about it. We noticed that there are no e-mails in the documents produced by ADOT. Also, there are meetings, forms, and other potential documents referenced in ADOT001393.

Are there any other documents that ADOT plans to produce to supplement its prior productions? RFP # 1 asks for "All documents and communications relating to your role in the actual and/or potential implementation of H.B. 2243 or H.B. 2492."

In ADOT's response to RFP# 1, there was an answer that said, "The Department also intends to produce communications, which are still being gathered." RFPs # 2-4 also ask for communications. The answers to those RFPs refer back to RFP # 1, which implies that communications were/are also being gathered in response to those RFPs. I'm attaching ADOT's responses for reference.

The last supplement I see in my email from ADOT was on July 17.

We will need those documents and any others in order to prepare for the deposition on August 11. Please provide those as soon as possible. I'm glad to discuss today before 2:30 pm Arizona time or after 4 pm.

Ernest I. Herrera
Regional Counsel, Western Region
Mexican American Legal Defense and Educational Fund
Pronouns: He/him/his
[634 S. Spring Street](#), 11th Floor
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[www.maldef.org](#)

From: Whitaker, Joshua <[REDACTED]>

Sent: Tuesday, August 1, 2023 9:55 AM

To: Ernest Herrera

Cc: [REDACTED] Erika Cervantes; Boughton, Kathryn; Horley, Timothy

Subject: RE: ADOT Issues

Thanks, Ernest. We will plan on the AG's office. Those who attend in person should arrive early, to check in through security. Please let us know how who plans to attend in person, so that security can be expecting them.

Thanks in advance for looking into who will be questioning in person and via Zoom. I don't think we need additional accommodations.

I haven't heard back from ADOT about the joint call with the expert. I've sent a reminder email about it. Will let you know when I hear back.

Thanks,
Josh

Josh Whitaker
Unit Chief, Special Litigation

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From: Ernest Herrera [REDACTED]
Sent: Monday, July 31, 2023 4:01 PM
To: Whitaker, Joshua [REDACTED] >
Cc: [REDACTED]; Erika Cervantes
[REDACTED]; Boughton, Kathryn [REDACTED] >; Horley, Timothy
Subject: RE: ADOT Issues

Hi Josh:

Thanks for the details on the deposition. I think the AG's office will work considering that Zoom capability is preferred.

As for your request on questions, we cannot agree to providing questions to the attorneys who will be there in question. I am happy to discuss that if needed. However, I can assure you that our chosen court reporter will make sure that Mr. Jorgensen has audio that is clear for the Zoom questioners. If we need to discuss any accommodations, please give me a call.

We can, however, provide you who will be the main attorneys asking questions and from which Plaintiffs groups, with the caveat that some Plaintiffs' groups may have follow-up questions. I will be asking questions on behalf of Promise Arizona. I will be there in person. I will provide you the names and order that I can as soon as possible.

Do you have any more news about ADOT's thoughts on doing a joint call with our expert to discuss accessing data?
Thanks.

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From: Whitaker, Joshua [REDACTED]
Sent: Monday, July 31, 2023 3:36 PM
To: Ernest Herrera [REDACTED] >
Cc: [REDACTED]; Erika Cervantes
[REDACTED]; Boughton, Kathryn [REDACTED]; Horley, Timothy
[REDACTED]
Subject: RE: ADOT Issues

Ernest and all,

For location of the 8/11 deposition, one option is the AG's office ([2005 N. Central Ave., Phoenix](#)). We've reserved a large conference room with Zoom capability in case Plaintiffs would like to use it.

Another option may be ADOT's office ([1801 W. Jefferson St., Phoenix](#)). There is a large conference room in that building. We've inquired about Zoom capability and have not heard back yet.

Let us know what you prefer.

Thanks,
Josh

From: Whitaker, Joshua
Sent: Sunday, July 30, 2023 7:00 PM
To: 'Ernest Herrera' [REDACTED]
Cc: [REDACTED]; 'Erika Cervantes'
[REDACTED] >
Subject: RE: ADOT Issues

Hi Ernest and all,

ADOT folks are wondering: For the 8/11 deposition, is it possible for Plaintiffs' counsel to provide all their questions to the attorney(s) who will be in person? They think that approach could make things easier for Mr. Jorgensen.

If that is not possible, could Plaintiffs identify in advance which plaintiff group(s) plan to ask questions, in which order, and whether they will be in person or via zoom? That could help Mr. Jorgensen understand what to expect.

Thanks,
Josh

Josh Whitaker
Unit Chief, Special Litigation

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[REDACTED]
[REDACTED]

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From: Whitaker, Joshua
Sent: Thursday, July 27, 2023 10:40 AM
To: 'Ernest Herrera' [REDACTED]
Cc: [REDACTED]; Erika Cervantes
Subject: RE: ADOT Issues

Ernest and all,

Confirmed that August 11 works for the deposition, and Mr. Jorgensen is fine with attorneys asking questions by Zoom.

Will follow about the call idea once I know more.

Thanks,
Josh

Josh Whitaker
Unit Chief, Special Litigation

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[REDACTED]
[REDACTED]

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From: Ernest Herrera <[REDACTED]>
Sent: Wednesday, July 26, 2023 5:02 PM

To: Whitaker, Joshua [REDACTED]
Cc: [REDACTED]; Erika Cervantes
[REDACTED] >
Subject: ADOT Issues

Hello Josh:

We want to propose a way to speed up the discussion with ADOT on accessing driver license data. Would it be possible to have a call on which we have our expert and whoever at ADOT knows about data access and security? This would help facilitate the discussion and see what is possible in terms of secure access to data in a manner that satisfies ADOT's privacy concerns and our discovery needs.

On our end, in addition to our expert, we'd have myself and two of the attorneys for Poder Latinx Plaintiffs, copied here.

Could you let us know if such a call is possible?

Also, for the deposition of Mr. Jorgensen, can you confirm for me whether attorneys will be able to ask questions by Zoom? Our court reporter has that capability, as I said yesterday, but I want to make sure that you're okay with that. If that's the case, then we should be able to do the deposition on 8/11.

Thank you.

Ernest I. Herrera
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Michelle Kanter Cohen
Policy Director and Senior Counsel
Fair Elections Center